MARCH
RCH 1976

POLICE OFFICER'S HANDBOOK

THE CRIMINAL LAW

PART XXII

DRIVER OF GETAWAY CAR
...GUILT BY INFERENCE
(State v. Lino, 263 SC 50, 208 SE2d 256)

DUI SUSPECT
RIGHT TO OPPORTUNITY FOR BLOOD TEST
(State v. Lewis, SC, Filed Jan.6, 1976)

ENTRAPMENT...
WHAT IS IT?
(Sherman v. US, 2 Led 2d 848)

FLEMING'S NOTEBOOK...Chapter 122:

1976 Legislation...
Keeping Records on Search Warrants

Prepared under the direction of E. Fleming Mason Producer of Crime-to-Court ETV Law Enforcement Informational Programs, in cooperation with South Carolina Educational Television Network with funds provided through the South Carolina Criminal Justice Academy.

LAW ENFORCEMENT - ETV TRAINING PROGRAM

POLICE OFFICER'S HANDBOOK

DRIVER OF GETAWAY CAR
...GUILT BY INFERENCE
(State v. Lino, 263 SC 50, 208 SE2d 256)

DUI SUSPECT
RIGHT TO OPPORTUNITY FOR BLOOD TEST
(State v. Lewis, SC, Filed Jan.6, 1976)

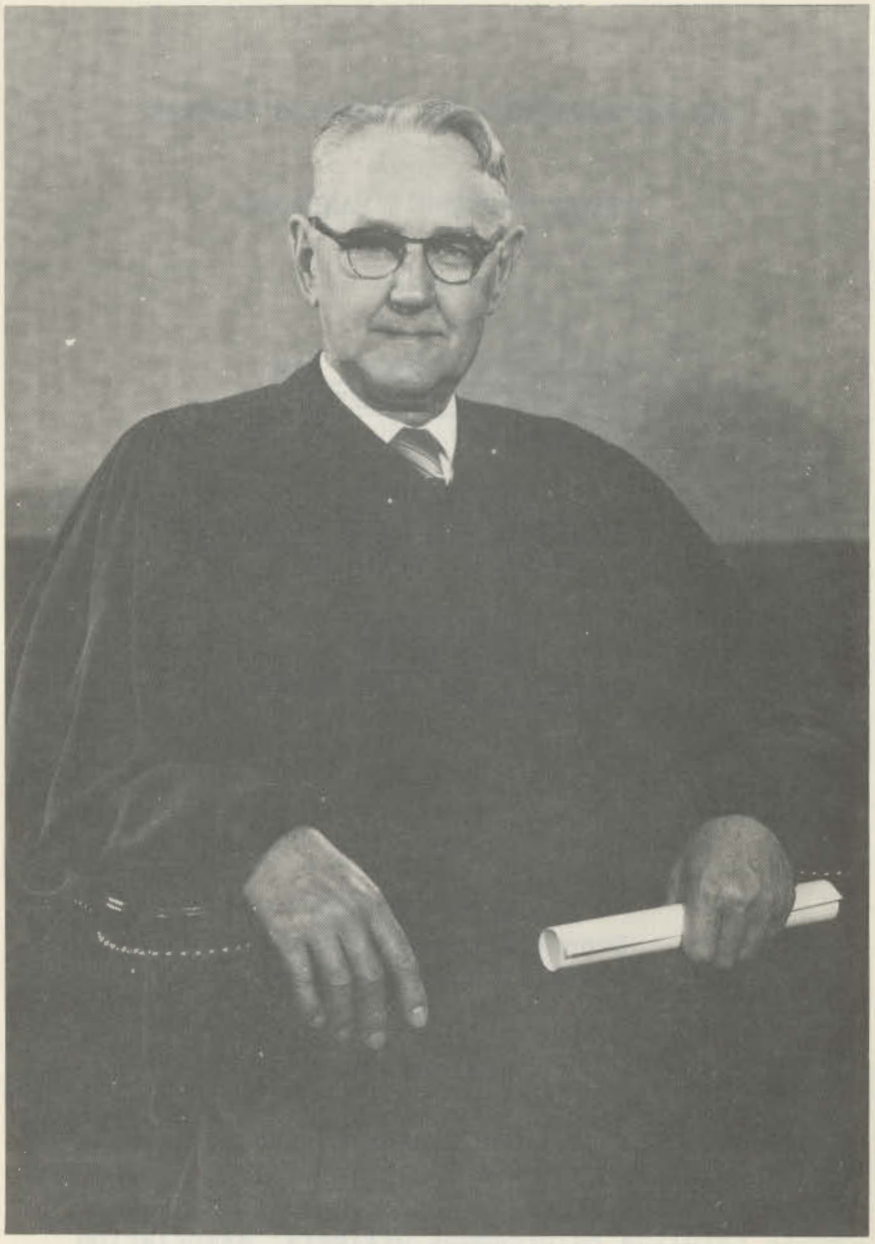
ENTRAPMENT...
WHAT IS IT?
(Sherman v. US, 2 Led 2d 848)

By

Joseph C. Coleman
Deputy Attorney General
State of South Carolina

Endorsed by

South Carolina Governor, James B. Edwards
South Carolina Law Enforcement Division
South Carolina Sheriffs' Association
South Carolina Enforcement Officers' Association
South Carolina Police Chiefs' Executive Association
South Carolina FBI National Academy Associates
South Carolina Southern Police Institute Associates



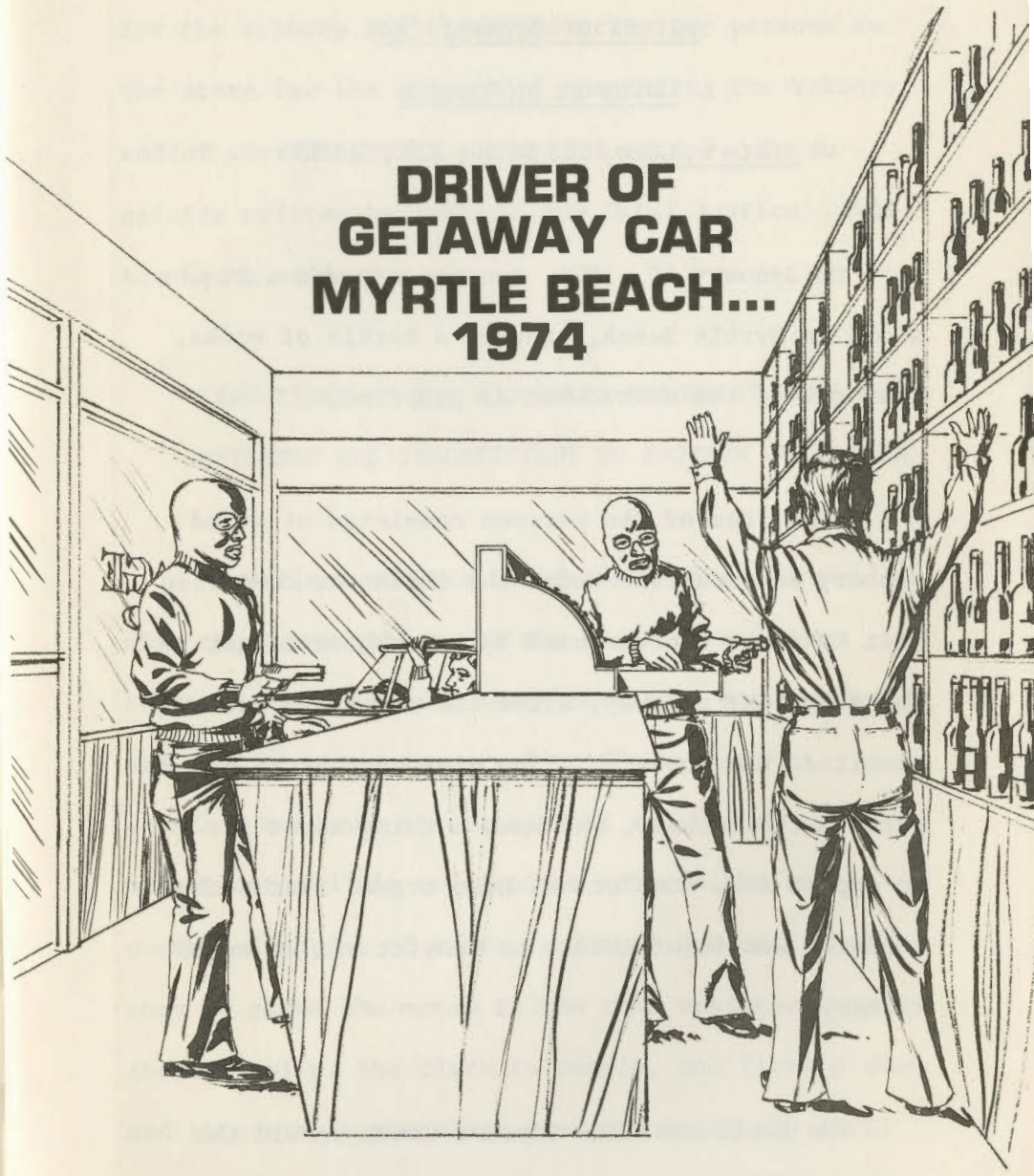
Hon. James Woodrow Lewis
Chief Justice
State of South Carolina

"The due process of the Fourteenth Amendment clause to the Constitution of the United States entitles a DUI defendant to a reasonable opportunity to obtain a blood test... even though the defendant has refused to take the breathalyzer test."

James Woodrow Lewis
Chief Justice
State of South Carolina

CONTENTS

	Page
Foreword by Hon. James Woodrow Lewis.....	2
Driver of Getaway Car ...Guilt by Inference.....	5
State v. Lino, 263 SC 50, 208 SE2d 256.....	5
DUI Suspect ...Right to Opportunity for Blood Test.....	10
State v. Lewis, SC, Filed Jan.6, 1976.....	10
Entrapment... What is It?.....	15
Sherman v. US, 2 Led 2d 848.....	15
FLEMING'S NOTEBOOK, Chapter 122.....	22
1976 Legislation... Keeping Records on Search Warrants.....	23



DRIVER OF GETAWAY CAR...

GUILT BY INFERENCE

State v. Lino, 263 SC 50, 208 SE2d 256

On January 19, 1974, two men entered a liquor store in Myrtle Beach, ordered a bottle of vodka, then robbed the storeowner at gunpoint.

Lino, one of the persons convicted of armed robbery in connection with the incident, testified that he drove the car used by two others to get to the store and getaway, after the other two had committed the robbery. Lino claimed that he had no part in the robbery, and knew nothing about it. On appeal from conviction, Lino argued that such evidence was insufficient to convict him of armed robbery.

The South Carolina Supreme Court upheld the conviction on the ground that a jury could properly infer from Lino's testimony that he knew of the plans

for the robbery and drove the other two persons to the store for the purpose of committing the robbery and of providing them a means of escape. In an opinion written by Justice (now Chief Justice) Lewis, the Court said:

"THE FIRST OF THE SUGGESTED ERRORS IS THAT THE EVIDENCE WAS INSUFFICIENT TO SUSTAIN CONVICTION.

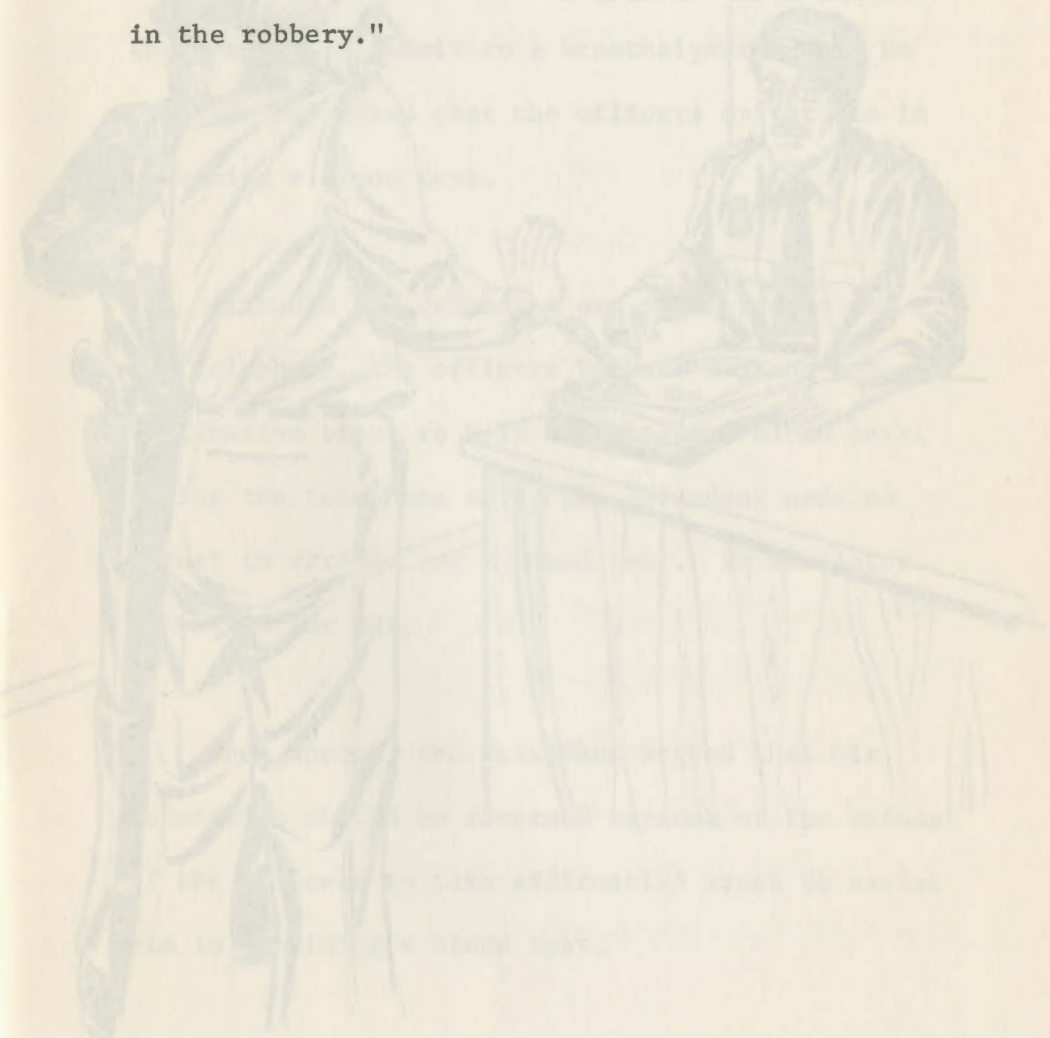
"Appellant and his codefendant were charged with the armed robbery of the clerk in a liquor store at Myrtle Beach, South Carolina, between 4:00 and 4:30 p.m., on January 19, 1974. There is abundant evidence to sustain the conclusion that appeallant and his codefendant entered the store, purchased a pint of vodka, and then demanded that they be given the money in the cash register. Upon the refusal of the clerk to comply, one fired a shot and then struck the clerk over the head with a .22 caliber pistol. When a customer entered during the robbery, appellant and the codefendant hurriedly

drove away in appellant's blue Plymouth automobile, taking a small amount of cash. The customer was able to get the license number of the Plymouth and through this information appellant was later apprehended.

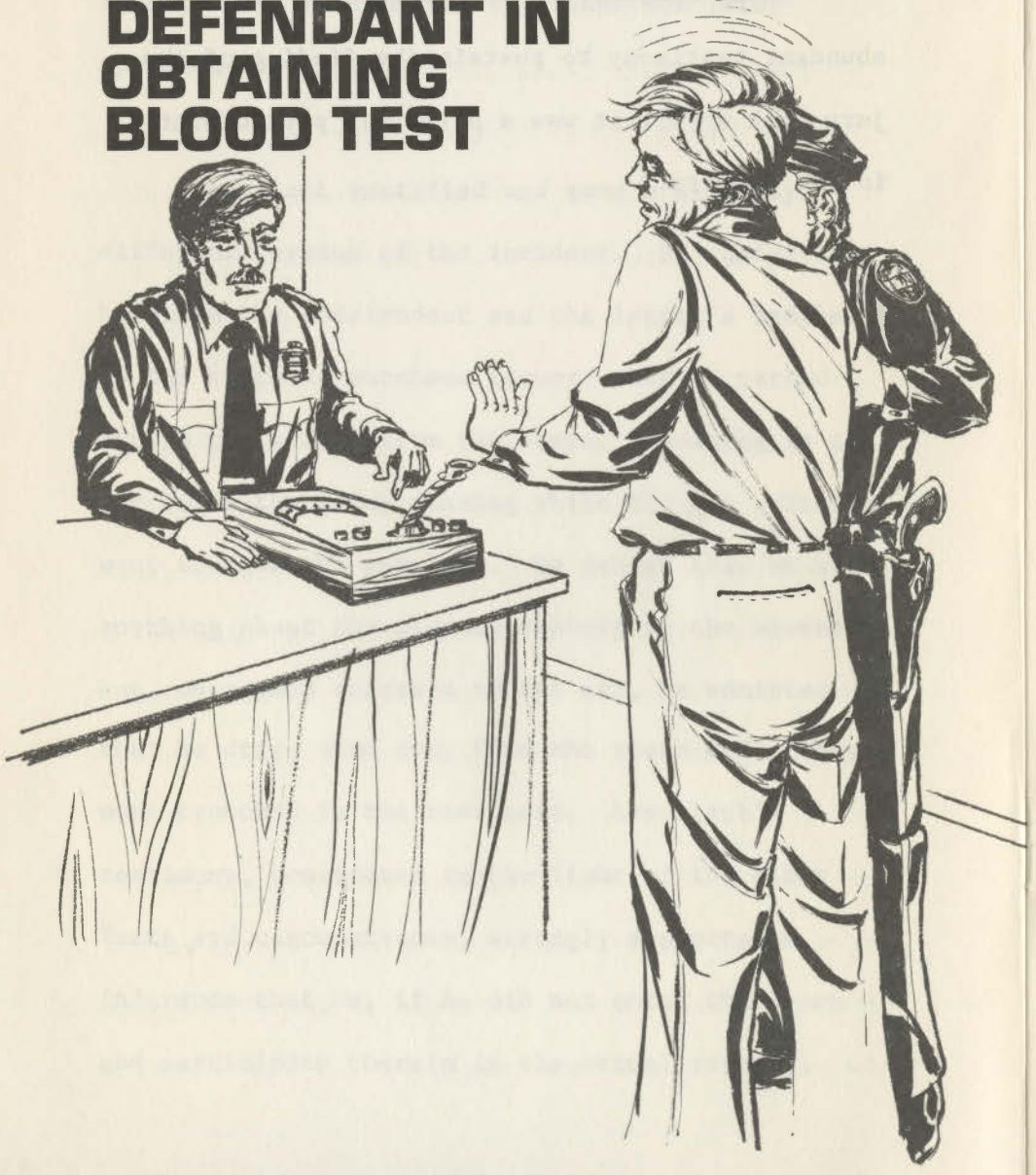
"Appellant testified and gave a slightly different version of the incident. He stated that he drove the codefendant and the latter's brother to the store to purchase liquor; that he parked across the street from the store, remaining in the car, with the motor running while the two brothers went to make the purchase. He denied that he knew anything about the planned robbery by the brothers but, when they returned to the car, he admitted that he drove them away from the scene while they were crouched in the rear seat. Appellant's testimony, considered in the light of the other facts and circumstances, strongly supports an inference that he, if he did not enter the store and participate therein in the actual robbery,

waited in the car while the robbery was committed in order to provide an escape.

"Under either view of the record, there is abundant testimony to sustain the finding of the jury that appellant was a principal participant in the robbery."



DUI...DUTY TO ASSIST DEFENDANT IN OBTAINING BLOOD TEST



DUI SUSPECT...

DUTY OF POLICE TO ASSIST IN OBTAINING BLOOD TEST

State v. Lewis, SC, Filed Jan.6, 1976

The defendant Lewis was arrested for DUI in Florence County, taken to the County jail, and was there asked to submit to a breathalyzer test. He refused, but asked that the officers assist him in obtaining a blood test.

Although the defendant was permitted to use the telephone, the officers refused to take any affirmative steps to help him obtain a blood test. During the telephone call, the defendant made no effort to arrange for a blood test. He was later convicted for DUI.

Upon appeal, the defendant argued that his conviction should be reversed because of the refusal of the officers to take affirmative steps to assist him in obtaining a blood test.

The South Carolina Supreme Court ruled as follows:

"WE ARE OF THE OPINION THAT LEWIS WAS ENTITLED TO A REASONABLE OPPORTUNITY TO OBTAIN A BLOOD TEST EVEN THOUGH HE REFUSED TO TAKE THE BREATHALYZER TEST."

Conviction was upheld, however, since the defendant had been permitted to use the telephone ...even though he had not attempted to arrange for a blood test during the call. The Court said that the permitted use of the telephone afforded the defendant an opportunity to obtain a test.

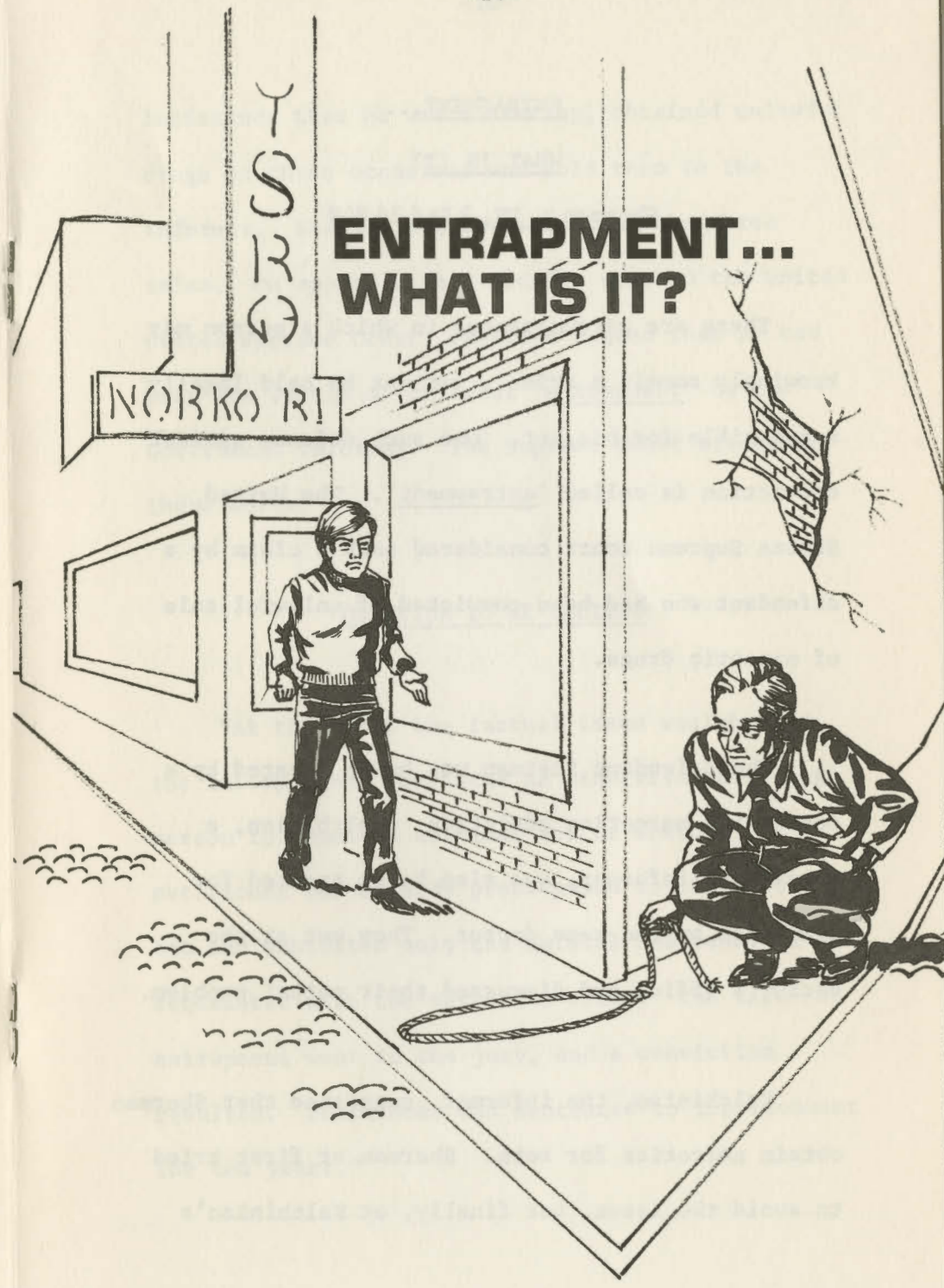
The DUI defendant's right to the opportunity to obtain a blood test even though he had refused to submit to a breathalyzer test was explained by the Court in these words:

"We next treat the contention that under the due process clause of the Fourteenth Amendment to the U.S. Constitution, Patrolman Harrelson was required to affirmatively aid Lewis in obtaining a blood test. Lewis argues that the failure to assist him thwarted his opportunity to procure evidence favorable to him and, thus, constituted a denial of due process.

"We are of the opinion that Lewis was entitled to a reasonable opportunity to obtain a blood test even though he refused to take the breathalyzer test. Although §46-344 does not expressly give a person this right, we do not construe the statute as depriving a person arrested for driving under the influence, who refuses to take a breathalyzer test, of a reasonable opportunity to obtain a blood test. However, we do not agree that Lewis was not afforded a reasonable opportunity because Harrelson refused to affirmatively assist him. What is reasonable will, of course, depend on the circumstances of each case.

"The facts in the instant case are not in dispute. Lewis was given the opportunity to use the telephone before and after he refused to take the breathalyzer test. He was able, in the opinion of the arresting officer, to locate the name of a doctor in the telephone book. On one occasion Lewis did make a telephone call but made no arrangements for a blood test. The law enforcement officers did nothing to prevent Lewis from obtaining a blood test.

"We conclude under these facts that Lewis was afforded a reasonable opportunity to obtain a blood test but failed to use it. His due process rights, therefore, were not violated by the actions of the law enforcement officers."



ENTRAPMENT...

WHAT IS IT?

Sherman v. US, 2 Led 2d 848

There are circumstances in which a person may knowingly commit a crime...yet not be held legally responsible for his act. One such defense against conviction is called 'entrapment'. The United States Supreme Court considered such a claim by a defendant who had been convicted of unlawful sale of narcotic drugs.

The defendant Sherman was being treated by a doctor for narcotics addiction. Kalchinian, a Government informer, was also being treated for addiction by the same doctor. They met at the doctor's office and discussed their mutual problem.

Kalchinian, the informer, suggested that Sherman obtain narcotics for both. Sherman at first tried to avoid the issue, but finally, at Kalchinian's

insistence that he was suffering, obtained unlawful drugs on three occasions and sold them to the informer. Sherman was convicted for the three sales. On appeal...that finally reached the United States Supreme Court...Sherman argued that he had been the victim of unlawful 'entrapment' by the Government informer. The Supreme Court agreed in these words:

QUESTION TO BE DECIDED

"At the trial the factual issue was whether the informer had convinced an otherwise unwilling person to commit a criminal act or whether petitioner was already predisposed to commit the act and exhibited only the natural hesitancy of one acquainted with the narcotics trade. The issue of entrapment went to the jury, and a conviction resulted. Petitioner was sentenced to imprisonment for ten years."

DEFENSE OF ENTRAPMENT

"In Sorrells v. United States, 287 U.S. 435, 53 S.Ct. 210, 77 L.Ed. 413, this Court firmly recognized the defense of entrapment in the federal courts. The intervening years have in no way detracted from the principles underlying that decision. The function of law enforcement is the prevention of crime and the apprehension of criminals. Manifestly, that function does not include the manufacturing of crime. Criminal activity is such that stealth and strategy are necessary weapons in the arsenal of the police officer. However, "A different question is presented when the criminal design originates with the officials of the government, and they implant in the mind of an innocent person the disposition to commit the alleged offense and induce its commission in order that they may prosecute." Then stealth and strategy become as objectionable police methods as the coerced confession and the unlawful search. Congress

could not have intended that its statutes were to be enforced by tempting innocent persons into violations."

HOW ENTRAPMENT IS DETERMINED

"However, the fact that government agents "merely afforded opportunities or facilities for the commission of the offense does not" constitute entrapment. Entrapment occurs only when the criminal conduct was "the product of the CREATIVE activity" of law-enforcement officials. (Emphasis supplied.) To determine whether entrapment has been established, a line must be drawn between the trap for the unwary innocent and the trap for the unwary criminal. The principles by which the courts are to make this determination were outlined in Sorrells. On the one hand, at trial the accused may examine the conduct of the government agent; and on the other hand, the accused will be subjected to an "appropriate and searching inquiry into his own conduct and predisposition" as bearing on his claim of innocence."

WHY SHERMAN CONVICTION WAS REVERSED

"We conclude from the evidence that entrapment was established as a matter of law. In so holding, we are not choosing between conflicting witnesses, nor judging credibility. Aside from recalling Kalchinian, who was the Government's witness, the defense called no witnesses. We reach our conclusion from the undisputed testimony of the prosecution's witnesses.

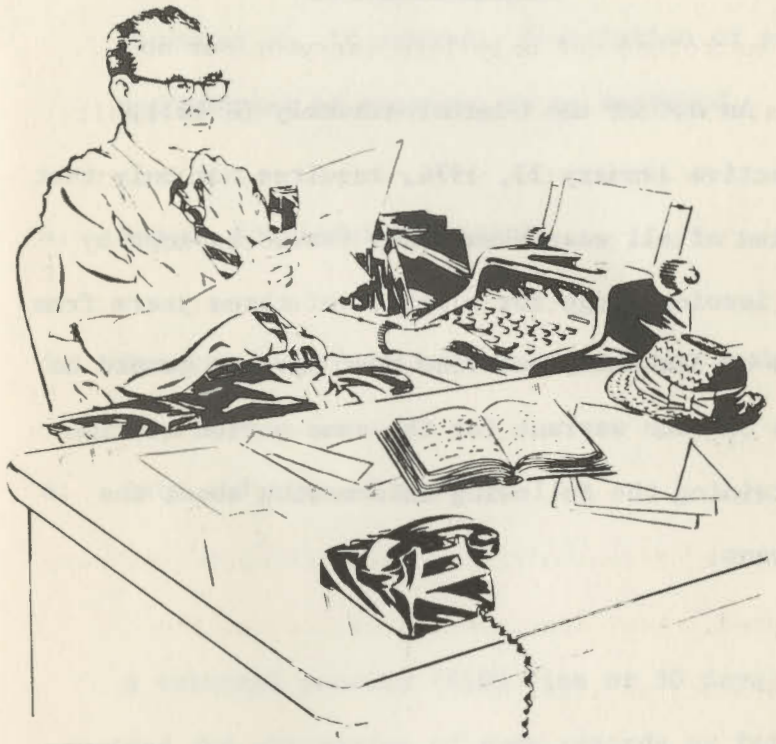
"It is patently clear that petitioner was induced by Kalchinian. The informer himself testified that, believing petitioner to be undergoing a cure for narcotics addiction, he nonetheless sought to persuade petitioner to obtain for him a source of narcotics. In Kalchinian's own words we are told of the accidental, yet recurring, meetings, the ensuing conversations concerning mutual experiences in regard to narcotics addiction, and then of Kalchinian's resort to sympathy. One request

was not enough, for Kalchinian tells us that additional ones were necessary to overcome, first, petitioner's refusal, then his evasiveness, and then his hesitancy in order to achieve capitulation. Kalchinian not only procured a source of narcotics but apparently also induced petitioner to return to the habit. Finally, assured of a catch, Kalchinian informed the authorities so that they could close the net."

WHY ENTRAPMENT IS A DEFENSE

"The case at bar illustrates an evil which the defense of entrapment is designed to overcome. The government informer entices someone attempting to avoid narcotics not only into carrying out an illegal sale but also into returning to the habit of use. Selecting the proper time, the informer then tells the government agent. The set-up is accepted by the agent without even a question as to the manner in which the informer encountered the seller. Thus the Government plays on the weaknesses of an innocent party and beguiles him into committing crimes which he otherwise would not have attempted. Law enforcement does not require methods such as this."

FLEMING'S NOTEBOOK!



FLEMING'S NOTEBOOK, Chapter 122:

1976 LEGISLATION

An act of the General Assembly (R 461), effective January 23, 1976, requires not only that copies of all search warrants issued be kept by the issuing judge for a period of three years from date of issuance, but also that another record be kept on each warrant for the same period of time containing the following information about the warrant:

1. Date and exact time of issuance.

2. Name of person to whom warrant issued.

3. Name of person whose property is to be searched or, if unknown, description of person and address of property to be searched.

4. Reason for issuing warrant.

5. Description of article sought in the search.

6. Date and time of return.

A criminal penalty ($100 fine or 30 days) is provided for alteration of such records or failure to keep such records.

30...EFM

STATEWIDE LAW ENFORCEMENT TRAINING
THROUGH TELEVISION

S.C. Law Enforcement Training
Council Members

J.P. Strom - Chairman	P.F. Thompson
Charles Dawley	Dr. James A. Timmerman, Jr.
L.E. Simmons	William D. Leeke
James Metts	Robert W. Foster
Joseph Loeffler	James L. Anderson
Daniel R. McLeod	James P. Ashmore

Clifford A. Moyer - Executive Director
S.C. Criminal Justice Academy

S.C. ETV NETWORK
2712 Millwood Avenue
P.O. Drawer L
Columbia, South Carolina 29250